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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,843	02/20/2004	Munetetsu Tei	249212US0CONT	4144

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ALEXANDRIA, VA 22314

EXAMINER

AFREMOVA, VERA

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/781,843

Applicant(s)

TEI, MUNETETSU

Examiner

Vera Afremova

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 37-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1.0-0

## **DETAILED ACTION**

### ***Restrictions***

Applicant's election with traverse of the Group I, claims 1-36, in the reply filed on 5/25/2005 is acknowledged.

The traversal is on the ground(s) that the product of Group I that is a lymphocyte cell(s) is not distinct from the product of Group II that is a plant extract since the lymphocytes "may" contain plant extract. However, claim 1 does not indicate any plant extract being in admixture with the lymphocytes-containing medication. Claim 37 is closed to any possible incorporation of lymphocytes by the language "consisting of". The Groups I and II are not mechanical combination-subcombinations of claimed elements as argued.

With regard to Groups I and III-V applicant argues that the cited JP 03-080076 does not relate to producing medication with "activated" lymphocytes. Upon review of the abstract it is established that JP clearly teaches that lymphocytes are "activated immunologically" and, therefore, the JP lymphocytes are "activated" by another method of making in order to provide for antitumor effects. The fact that the JP product provides the anti-tumor effects is clearly admitted by applicant (specification page 1, lines 18-19).

With regard to Groups I and VI applicant's argument is not persuasive because "a living body" under administration in claim 54 is not a microbial cell but a mammal or a mouse in the light of as-filed specification (page 11).

Thus, the arguments are not found persuasive for the reasons above.

The requirement is still deemed proper and is therefore made FINAL.

*Election of species*

The Group I elected claims (original claims 1-36) are directed to the following patentably distinct species of the claimed invention:

lymphocytes treated with heat to induce HSP 60-80 (claims 7-18);

lymphocytes treated with “galenical extract” of Rauwolfia serpina to induce HSP (claims 22-25);

lymphocytes treated with “galenical extract” of linderæ radix to induce HSP (claims 28-30);

lymphocytes treated with “galenical extract” of safflower to induce HSP (claims 31-33);

lymphocytes treated with “galenical extract” of Scutellaria radix to induce HSP (claims 34-36);

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-6 are generic as related to the heat-treated lymphocytes to induce HSP 60-80. Currently, claims 19-21 are generic as related the lymphocytes treated with a generic “galenical extract” to induce HSP.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1651

August 5, 2005

A handwritten signature in black ink, appearing to read 'V. Afremova', with a long horizontal flourish extending to the right.

VERA AFREMOVA

PRIMARY EXAMINER